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September 15, 1989  
11478-26

BY HAND

Mr. Paul Keough,  
Acting Regional Administrator  
U.S. EPA - Region I  
2203 JFK Federal Building  
Boston, MA 02203

**RECEIVED**

SEP 20 89

Mr. Merrill S. Hohman,  
Director, Waste Management Division  
U.S. EPA - Region I  
2203 JFK Federal Building  
Boston, MA 02203

ME & VT WASTE  
MANAGEMENT DIVISION

Re: New Bedford Harbor Superfund Site

Dear Messrs. Keough and Hohman:

On August 14, 1989, we wrote to you to request an extension of the public comment period for the New Bedford Harbor Draft Final Hot Spot Feasibility Study ("HSFS"). Our request was premised on the extensive amount of material that had to be reviewed in order to comment meaningfully on the report and on the continued unavailability of critical data and studies relied upon by EPA in the preparation of the HSFS. Thereafter the agency extended the public comment period from September 1 to October 2, 1989.

Our August 14 request for an extension (a copy of which is attached for your reference) described several specific categories of information which had not been made available as of the date of that letter. As of this date, most of the specific data described in that letter has yet to be provided to the defendants or to the public. The information is needed in order to comprehensively evaluate the rationale and technical basis for the definition of the Hot Spot and the proposed remedial action. To reiterate the points made in our earlier letter:

1. With respect to the pilot dredging project, we have not yet received the air quality data or the results of aquatic toxicity testing conducted during the pilot dredging program.

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Site: NEW BEDFORD  
Date: 11.5.143  
Other: 57928

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The air quality data should be utilized to estimate the air quality impacts of the proposed dredging and treatment. Without a summary of such an analysis or a copy of the data, we cannot evaluate the potential air quality impacts of the recommended remedy. The aquatic toxicity test results are referenced in the Corps' final report but without more detail we cannot ascertain why impacts on certain organisms were observed or how those observations relate to the full-scale implementation of the recommended alternative. We consider this information extremely important in evaluating the overall effectiveness of the pilot dredging project which, in turn, is one of the lynchpins in EPA's justification for the proposed Hot Spot remediation.

2. EPA has only this week provided us the mechanism for obtaining the data utilized to define the Hot Spot. We will now have to develop an understanding of what data are available, copy the information and conduct a thorough analysis of the data. This task will take at least several weeks depending on the volume of information that is available and the speed with which we receive it. We have also been advised that much of the needed data is in the hands of third-party contractors, so that it may take several weeks to arrange for that data to be made available to defendants. We need such information in order to evaluate the rationale for establishing the Hot Spot, the quality of the data utilized and any other information contained in the data sets.

3. While EPA publicly released the "Draft Final Baseline Public Health Risk Assessment" on August 23, we have yet to receive a copy of the Ecological Risk Assessment which is referenced and relied upon in Section 3.2 of the HSFS. In particular, we direct your attention to the statement in the HSFS that "[t]he focus of this document concerns the effects of PCB contamination in the Hot Spot area of the upper estuary" (page 3-10). Further, Section 3.2.3 of the report specifically addresses "Ecological Risks Associated With the Hot Spot Area." Given the specific reliance on the Ecological Risk Assessment contained in the HSFS, defendants and the public clearly must be afforded an opportunity to review that document to properly evaluate the merits of EPA's proposed remedial action.

We should also note that the reports on pilot testing of individual technologies, discussed in paragraph 4 of our prior letter, was not made available to us until August 23.

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For the reasons which we cited in our prior letter, we believe that the significance of the remedial action which the government proposes to undertake in the upper estuary requires that there be an adequate opportunity for the defendants and the public to comment on the proposed action after a full and fair opportunity to review the supporting data. Even if all of the information described above were provided today, we believe that the current deadline does not allow "a reasonable opportunity" (SARA, §117) for public comment, considering that the HSFS is the product of a study that has been ongoing since 1982. When the "Fast Track" Feasibility Study for the upper estuary was issued for public comment in August 1984, the agency allowed a comment period of approximately five months. That report did not even involve the analysis of any new supporting technical data or field work. In contrast, the HSFS relies heavily on numerous studies and information obtained both before and after the New Bedford Harbor site was listed on the NPL in 1982. Therefore, far more substantial reasons exist for establishing a comment period of at least comparable length regarding the HSFS.

Accordingly, the defendants renew their request for an extension of the comment period until 60 (sixty) days after the receipt of all of the above-referenced documents and any other supporting documentation utilized in the development of the HSFS in order to comment comprehensively and thoughtfully on the proposed Hot Spot operable unit. By making this request our clients do not waive their right to discovery, an adjudicatory hearing, or a de novo trial in the ensuing proceedings.

We look forward to your prompt response to this request.

Very truly yours,

*Paul B. Galvani, mkr*

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Eleanor D. Acheson, for  
Aerovox, Inc.

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